

STATE OF MICHIGAN
COURT OF APPEALS

DAVID BEATTY,

Plaintiff-Appellant,

v

SYLVIA BEATTY,

Defendant-Appellee.

UNPUBLISHED

March 18, 2008

No. 276565

Oakland Circuit Court

LC No. 2000-642072-DM

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted an order effectively denying his motion for sanctions under MCR 2.114. We vacate the order of the trial court denying sanctions and remand this case back to the trial court for further proceedings consistent with this memorandum.

A consent judgment of divorce was entered in this case on May 21, 2001. The judgment provided that each party was awarded a 50% interest in the other party’s “Ford Motor Co. pension plan(s) acquired during the term of the marriage.” On August 19, 2004, the trial court entered an order granting plaintiff’s motion to enforce this provision by using as the valuation dates for the relevant Qualified Domestic Relations Order (QDRO) pertaining to plaintiff’s pension, the dates of the parties’ marriage and the parties’ divorce. This was contrary to defendant’s position, seeking to use as the valuation dates the dates of the parties’ marriage and of plaintiff’s retirement.

However, on February 5, 2007, defendant, in a pleading signed by her then attorney, filed an emergency motion seeking in relevant part, to change the latter valuation date for the QDRO pertaining to plaintiff’s pension from the date of the parties’ divorce to the date of plaintiff’s retirement. In support of this request defendant stated:

11. That Defense counsel also spoke with Divorce Solutions, LLC, QDRO experts, and new information has come to light.
12. That upon information and belief, the State Legislature has enacted a Statute to resolve the very same issue of valuation date of pensions briefed by the parties. It is apparent that the State Legislature recognized the unfairness of valuing the marital share of pensions on the date of Judgment of Divorce and that the Date of Retirement is equitable, fair and

appropriate date [sic] in ALL CASES IN MICHIGAN. Clearly, at the time Plaintiff and Defendant briefed the issue to this court there was ambiguity and case law supporting both positions.

13. That the Defendant's position is that this Court is now bound by the current Statute and law since there was no Amended QDRO entered at the time in 2004 and must follow the Statute and enter the Amended QDRO Mr[.] Gould prepared for the Defendant.

Defendant has never provided any actual citation to a statute making the purported change regarding the valuation date of pensions, and it appears undisputed that no such statutory change was actually made.

Plaintiff filed a response to the emergency motion on February 9, 2007. Of particular importance, plaintiff sought sanctions under MCR 2.114 because the claim of a statutory change regarding the valuation of pensions in defendant's emergency motion was unsupported and inaccurate. The trial court apparently declined to entertain defendant's emergency motion because of the lack of citation of legal authority in support of her position. Nevertheless, in the order being appealed, the trial court denied plaintiff's request for attorney fees and costs without explanation.

Plaintiff argues that the trial court erred by denying his motion for sanctions, in particular attorney fees and costs, under MCR 2.114 because defendant's relevant motion, predicated on a supposed statutory change that did not actually occur, was not supported by existing law or a good-faith argument to extend, modify, or reverse existing law. The trial court did not state a reason for denial of sanctions; therefore we cannot state without ourselves engaging in fact finding whether the trial court clearly erred in its denial of sanctions.

On remand, the trial court must determine on the record whether defendant's attorney violated MCR 2.114(D) by failing to conduct a reasonable inquiry before submitting her motion seeking to change the valuation date. On remand, the trial court may determine that it was clearly unreasonable for an attorney to advance such a legal argument without having conducted legal research to verify that the purported statutory change had actually occurred.¹

Finally, while acknowledging that the issue is moot, plaintiff argues that he should have been able to bring this appeal from a postjudgment order denying attorney fees as an appeal of right rather than by filing an application for leave to appeal. We decline plaintiff's invitation to reach this moot issue because a moot issue should not be addressed "unless the issue is one of public significance that is likely to recur, yet evade judicial review." *Federated Publications, Inc v Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002). This issue cannot reasonably be characterized as one likely to recur, yet evade judicial review. Particularly, if a similarly situated

¹ We express no opinion as to whether the trial court should or should not impose sanctions pursuant to MCR 2.114, but request that the trial court state its reasons for the granting or denial of sanctions on the record.

party were to file a claim of appeal rather than an application for leave to appeal, this Court could then address either sua sponte or in response to a jurisdictional challenge whether the claim of appeal was properly filed.

We vacate the order being appealed and remand this case to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher